(3)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR.

Criminal Appeal No. 26 / Of 2001.

APPELLANT:-

(INJAIL)

Puniram S/o Firturam, aged 30 years, R/o village Jhalmala, P.S.Pamgarh, Tehsil Janjgeer, Distt. Janjgeer Champa.

-versus-

RESPONDENT:-

The State of Chhattisgarh, through Station House Officer, P.S.Pamgarh, Tehsil Janjgeer, Distt. Janjgeer, Champa.

CRIMINAL APPEALUNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE.

1042

Filed on 9-3-2001 by Shri Rakhesh Kumar Shrivastava Advocate

R. to AR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 261 of 2001

Appellant : Puniram

Vs.

Respondent : State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd/-
Dhirendra Mishra
Judge

HON'BLE SHRI L.C.BHADOO,J

Sd/-
L.C. BHADOO
Judge

POST FOR JUDGMENT ON 27th APRIL 2006

Sd/-
Dhirendra Mishra
Judge

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 261 of 2001

Appellant : **Puniram**

Vs.

Respondent : **State of Chhattisgarh**

Shri G.A. Aahluwalia, learned counsel for the appellant.

Shri U.N.S. Deo, learned G.A. with Shri D.K. Gwalre, learned Dy. G.A. for the State/respondent.

JUDGMENT
(Delivered on 27.04.2006)

Per Dhirendra Mishra, J

Appellant Puniram has preferred this appeal under Section 374(2) of the Code of Criminal Procedure as learned Additional Sessions Judge, Janjgir vide his judgment dated 12th January 2001 has held the appellant guilty under Section 302 of the Indian Penal Code for causing homicidal death of Raju Yadav and Shatruhan and sentenced him to undergo imprisonment for life and pay a fine of Rs. 1000/- on each count, in default of payment to further undergo imprisonment for six months.

2. Case of the prosecution in brief is that 3-4 days prior to the date of incident i.e. 24.03.1997 there was some dispute between deceased Shatruhan and the appellant in connection with suspicion regarding relationship of the wife of Shatruhan with the appellant and because of this animosity appellant Puniram and acquitted accused Koushal Patel assaulted Raju Yadav and Shatruhan by axe and club as a result of which deceased Raju died on the spot whereas deceased Shatruhan succumbed to the injuries at about 3.00 a.m. on 25.03.1997 in hospital.

3. PW-1 Teras Prasad went to the Police Station – Pamgarh along with injured Shatruhan and lodged the First Information Report of Ex.P/1 at about 22.00 hours on the date of incident, in which he mentioned the name of appellant Puniram and co-accused Koushal Patel as accused persons. On the basis of this report offences under Sections 302 read with Section 34 and 307 of the I.P.C. were registered. Merg intimation of Ex.P/2 with respect to death of Raju Yadav was also registered at the same time. Injured Shatruhan was sent for treatment to Primary Health Centre, Pamgarh on 24.03.1997 vide Ex.P/18. Dr. D.C. Choudhary (PW-8) examined Shatruhan on 24.03.1997 at about 11.00 p.m. and gave his report of Ex.P/12. On examination he found incised wound over left parietal region of size 6 x 2 x 2 c.m. tailing backwards and also noticed that brain material was coming out as scalp bone was cut. The patient was unconscious and he was referred to surgical specialist, Main Hospital, Bilaspur for further treatment. However, Shatruhan was admitted in the Main Hospital, Bilaspur on 25.03.1997 at about 2.10 a.m. and he expired on 3.10 a.m on the same day. Merg intimation of Ex.P/17 to this effect was given to police station and on the basis of which merg No. 06/97 of Ex.P/16 was registered in Police Station – Pamgarh. The Investigating Officer proceeded for investigation to the place of occurrence and after giving due notice to the witnesses he performed inquest over the dead body of Raju Yadav and prepared the inquest report of Ex.P/5. Dead body of Raju was sent for autopsy vide Ex.P/21 to Primary Health Centre, Pamgarh where Dr. D.C. Choudhary conducted postmortem and submitted his report Ex.P/11. Memorandum (Ex.P/6 and P/7) of accused persons namely Koushal Prasad and Puniram under Section 27 of the Evidence Act were recorded and in pursuance of which bloodstained club and bloodstained axe were recovered vide Ex.P/10 and Ex.P/9 respectively. From the place of incident bloodstained soil, plain soil and bloodstained towel of injured Shatruhan were seized vide Ex.P/8. Sealed packet containing wearing apparels – pant, shirt, vest and underwear of deceased Shatruhan sent by the doctor was seized vide Ex.P/14. Similarly sealed packet containing bloodstained clothing – underwear and lungi of deceased Raju Yadav sent from P.H.C., Pamgarh was seized vide Ex.P/15. Inquest report of the dead body of Shatruhan was prepared by City Kotwali, Bilaspur on 25.03.1997 in the presence of witnesses. The body of

Shatruhan was sent for autopsy vide Ex.P/18 by Police Station – City Kotwali whereupon Dr. G. L. Arora (PW-14) conducted postmortem and submitted his report of Ex.P/19. The bloodstained axe and club seized from Puniram and Koushal Prasad were sent for examination to P.H.C., Pamgarh for its opinion vide Ex.P/22. Dr. D.C. Choudhary gave his opinion vide Ex.P/13 that the injuries present over the persons of Shatruhan and Raju Yadav could be caused by axe and the same could not be caused by club. The accused persons were arrested on 25.03.1997 vide Ex.P/23 and P/24 whereas accused Harchandlal Patel was arrested on 09.04.1997 vide Ex.P/25. The bloodstained articles were sent for chemical examination to Forensic Science Laboratory, Sagar vide Ex.P/26 and report of the F.S.L. is Ex.P/27.

4. After completing the investigation charge sheet was filed against the appellant and other two accused persons under Section 302/34 of the IPC in the Court of Judicial Magistrate First Class, Janjgir who in turn committed the case to the Court of Sessions Judge, Bilaspur and the same was received on transfer by the learned Additional Sessions Judge for trial. Charge under Section 302/34 of the IPC was separately framed against all the three accused persons for causing homicidal death of deceased Raju Yadav and Shatruhan. The accused persons abjured their guilt.

5. Prosecution in order to establish the charges against the accused/appellant Puniram examined 15 witnesses in all. Thereafter statement of the accused/appellant was recorded under Section 313 of the Cr.P.C. in which he denied the incriminating circumstances appearing against him in the prosecution case and stated that all the witnesses are lying due to animosity. He took a defence that on the date of incident deceased Shatruhan came to his house, caught hold of the hand of his sister-in-law (*Bhabhi*) Kumari Bai and started dragging her saying that he would rob her honour and hence he (the appellant) defended her *Bhabhi* and himself because Shatruhan was also threatening to kill him. Brother of Shatruhan namely Raju was with him and he was holding axe and club. Demeanor of Shivmati was not good and she narrated false things about him to her husband, therefore, Shatruhan and Raju

nourished animosity against him and now Shivmati is residing with Mohammedan.

6. After hearing counsel for the parties the Court below convicted the appellant Puniram as mentioned above. However, co-accused Koushal and Harchand have been extended benefit of doubt and acquitted.

7. Homicidal death of deceased Raju and Shatruhan is not in dispute. Even otherwise from perusal of the postmortem reports Ex.P/11 of Raju Yadav, Ex.P/19 of Shatruhan and from the statements of Dr. D.C. Choudhary (PW-8) and Dr. G.L. Arora (PW-14) who have proved their reports and found the following injuries on the body of deceased persons, the homicidal death of Raju and Shatruhan is established.

Injuries found on the body of deceased Raju Yadav :-

(i) one incised wound on the left side chest on the sterno condral area perpendicular at the level of nipple in the size of 1 ½" x 1" x ½" tailing downwards, ribs were cut;

(ii) incised wound on the right side of the chest near sterno clavicular area of size 2" x 1 ½" x 1", clavicle and veins of neck were found cut;

(iii) incised wound on the right inguinal region obliquely of size 1 ½ " x 1" x 1" resulting in cutting of subcutaneous tissues and muscles;

(iv) incised wound obliquely on the right thigh of size 3" x 1" x 1" cutting skin subcutaneous tissues and muscles vessels.

On internal examination two incised wounds of size ½" x ½ " over the right chest ventricle were found and lungs, food pipe and trachea were found full of blood. In the opinion of the doctor cause of death was shock due to excessive bleeding and injuries over the vital organ

i.e. heart which were sufficient to cause death in the ordinary course of nature and the death was homicidal in nature.

Injuries found on the body of deceased Shatruhan:

(i) stitched wound 6 c.m. long over the left temporoparietal area;

(ii) on incision skull bone deep wound found on the left parietal region;

(iii) temporal and occipital bones were fractured.

On internal examination parietal and temporal bones were found broken and brain material was coming out from the wound and blood was present in the brain. The doctor opined the cause of death to be coma due to injury over the head which were sufficient in the ordinary course of nature to cause death and the death was homicidal in nature.

8. The next question to be considered in this criminal appeal is – whether the prosecution has been able to establish the involvement of the accused/appellant in causing death of above two deceased persons by adducing cogent and reliable evidence?

9. Learned counsel for the accused/appellant submits that all the witnesses examined by the prosecution are close relatives of the deceased persons with whom the appellant had inimical relation. Independent witnesses though available, have not been examined and therefore adverse inference should be drawn against the prosecution. The account given by the alleged eyewitnesses is contradictory which makes their presence on the place of incident doubtful. It is contended that conviction of the accused/appellant Puniram rests on the statements of Teras Prasad (PW-1), Gouribai (PW-2) and Shivmati (PW-3) who are the alleged eyewitnesses. It is further contended that all the above three witnesses are closely related to the deceased and therefore, their statements should be minutely scrutinized. Teras Prasad has stated that at the time of

incident his daughter Gouri came home and informed that Puniram and Koushal are assaulting Raju Kaka and Shatruhan by axe near *Peepal* tree whereupon he proceeded for the place of occurrence and saw both of accused persons assaulting Raju and Shatruhan with axe. It is argued that initially this witness had stated that the both the accused persons were assaulting with axe but subsequently he stated that accused Koushal was assaulting Shatruhan with lathi and when he saw them assaulting, he ran away from there to save his life. He has further stated he saw Harcharan there but he was not doing anything. On hearing his shouts villagers gathered there, however, he does not know as to who came first. He has made material improvements in his Court statement as in his diary statement of Ex.D/1 he has not mentioned any assault by Puniram to Shatruhan. In paragraph – 16 of his Court statement he has stated that his neighbours namely Karam Singh, Vichar Singh and Dhananjay Singh were sitting on a platform some 50 paces away from the place of incident. However, he has further stated that his daughter Gouri had told him that Puniram and Koushal are assaulting Raju and Shatruhand and when he reached the spot Koushal ran away towards his house. On the contrary, PW-2 Gouribai contradicts his statement to the extent that she told him that Puniram and Koushal were assaulting Raju and Shatruhan by axe. She has stated that she did not see Shatruhan being assaulted and she has stated that Puniram and Koushal assaulted her uncle Raju by axe. Similarly PW-3 Shivmati, wife of Shatruhan, who claims to be the eyewitness has stated that on hearing the shout "*Maar, Maar*" she came out of her house and saw that Puniram was assaulting her husband Shatruhan by axe and thereafter darkness pervaded before his eyes and when she was able to see something she found that Raju had fallen on the ground. In paragraph – 13 of her cross examination she has stated that before she fell unconscious she saw only Vichar Singh on the spot and did not see anyone else.

10. Learned counsel for the accused/appellant contended that from the statement of Shivmati, the presence of the complainant (PW-1) on the spot becomes doubtful. A suggestion has been given to Shivmati on behalf of the appellant that in fact she had illicit relationship with PW-1 Teras who was son of

Puniram and therefore she was falsely implicating Puniram in the said incident but she had denied the suggestion that in fact Teras had killed Shatruhand and Raju also. In paragraph – 15 of her statement a suggestion given by the appellant to her that Raju and Shatruhan were dragging the wife of Puniram, they were carrying axe and when they tried to assault Puniram, Puniram snatched the axe to defend himself, has been denied by this witness. A suggestion that her husband and her brother-in-law (*Dewar*) were dragging the wife of Koushal has also been denied. Extensively referring to the Statement of PW-5 Vijay it is further argued that from the spot map Ex.P/3, Vijay had seen the incident from a close distance and he has stated in paragraph – 9 of his evidence that till his father and uncle fell, nobody came there to see the incident.

11. It is further argued that PW-2 Gouribai is an 11 year old girl. From the site plan it is evident that the village tank is very near to the place of incident. This witness has stated that the tank is some 50 paces away from her house and she saw the incident while she was returning from the tank after answering the call of nature. However, looking to the fact that her house is just 50 paces away from the tank, there was no occasion for her to go near the place of incident and as such her presence on the place of incident is doubtful.

12. Learned counsel for the State supported the impugned judgment of the trial Court.

13. We have heard learned counsel for the respective parties and perused the material available on record.

14. Gouribai is 11 years old illiterate minor girl, her presence on the spot is very natural. She has stated in her evidence that when she was returning from the tank she saw the incident. From the spot map of Ex.P/3 the place of incident is shown to be roughly 40 yards (1.93 Jarib which is erroneously written as "Kari") and the house of Raju comes after the place of incident on the same lane. She saw the accused persons assaulting Raju and thereafter went to her home to call her father Teras. She has admitted that she did not see Shatruhan being

assaulted. Her above statement finds support from the statement of PW-1 Teras Prasad in material particulars. The argument of learned counsel for the appellant that version of Teras that her daughter Gouribai told him regarding accused persons assaulting the deceased persons which is contradicted by the statement of Gouribai, cannot be accepted as in paragraph – 9 of her statement Gouribai has categorically stated that after witnessing the assault made by Puiram she went to call her father Teras. However, by the time Teras reached Raju was dead.

15. So far as the argument advanced by counsel for the appellant that the presence of the above witnesses on the spot is doubtful is concerned, the presence of PW-1 and PW-2 on the spot cannot be disbelieved particularly when the above fact has been mentioned in the promptly lodged F.I.R. by PW-1 who went along with injured Shatruhan to the police station and that the statement of PW-1 is further corroborated by the postmortem reports of deceased Raju and Shatruhan.

16. Learned counsel for the appellant placed his reliance in the matter of **State of Rajasthan Vs Mani Ram** reported in **2001 Cri. L. J. 3283** and argued that where version of eyewitness about number and nature of injuries received by the deceased is not supported by medical evidence and conduct of the eyewitnesses in not making any attempt to save the deceased who was his grandmother with whom he was living is not natural, the evidence of such witnesses cannot be relied upon.

17. Further relying upon the judgment of the Apex Court reported in **2001 Cri. L. J. 1176** in the matter of **State of Rajasthan Vs. Teja Singh and others** it is argued that in the absence of corroboration of the evidence of interested witnesses the accused persons must be acquitted.

18. Further relying upon the judgment of the Supreme Court in the matter of **Pratap Singh and Anr. Vs. State of Madhya Pradesh** reported in **2006 Cri. L. J. 310** it is argued that where a minor eyewitness contradicts himself on material

particulars as to witnessing the incident and narration of incident by the other witnesses, possibility of such eyewitness being tutored cannot be ruled out.

19. Learned counsel also placing his reliance in the matter of **Sohan and Anr. Vs. State of Haryana and Anr.** reported in **2001(2) Crimes 49 (SC)** argued that where conviction is based on the statement of eyewitness which is not only interested witness but also inimical to accused and where other eyewitnesses though available but were not examined and their evidence is also not inspiring confidence and there is no corroboration, in such circumstances conviction cannot be based on the testimony of such witnesses.

20. Learned counsel for the appellant vehemently argued that the name of accused persons is not mentioned in the inquest report of decease Raju.

21. Relying upon the judgments of the Supreme Court reported in **AIR 1975 S.C. 1962** in the matter of **Balaka Singh Vs. State of Punjab** and **1994 Cri. L. J. 280** in the matter of **State of Gujarat Vs. Patel Mohan Mulji and another** it is argued that omission of name of accused persons in the body of the inquest report makes the F.I.R. in which the accused persons are named, doubtful.

22. In the matter of State of Rajasthan Vs Mani Ram (supra) the account of the eyewitnesses was rejected because the testimony of the witnesses did not find support from the medical evidence and it was disbelieved on the ground that witness had falsely stated that due to fear he had passed stool in his dhoti which was falsified by the statement of the Investigating Officer. However, in the instant case as already pointed out the account given by PW-1 Teras and PW-2 Gouribai is further corroborated by medical evidence as also by the F.I.R. So far as the argument of counsel for the appellant that the witnesses have improved upon their diary statements is concerned, it is true that certain improvements were made by these witnesses in their diary statements wherein they have attributed the assault by co-accused Koushal also, however, the learned trial Court did not accept the above versions of these witnesses and accordingly acquitted the co-accused Koushal. The statements of these witnesses can not

be discarded in toto simply because they made some improvements in their statements with respect to overt act attributed to the acquitted co-accused.

23. So far as the statement of PW-5 Vijay is concerned, the Court below has not relied upon his statement and has not based the conviction of the appellant on his statement, therefore, on the basis of statement of one unreliable eyewitness the statement of other witnesses cannot be discarded whose version is otherwise reliable.

24. The above cited case State of Rajasthan Vs. Teja Singh and others (supra) is distinguishable from the instant case on facts as in the cited case three eyewitnesses examined by the prosecution were relatives of the deceased and out of them one witness is very old person having problem with his eyes and the statement of second witness was recorded after five days of the crime and the third one was disbelieved on the ground that she claimed that she lifted the body of the deceased which was bleeding and her clothes had become bloodstained but there was no recovery of her bloodstained clothes which was considered to be doubtful. Apart from the above circumstances, there were many independent eyewitnesses even according to the prosecution but none of them was examined. The Sarpanch of the village who has stated as a prosecution witness that he first communicated about the incident in question to the police station, was not examined by the prosecution and this witness has appeared as a defence witness and stated that the above eyewitnesses did not mention the name of the accused persons. However, in the instant case it is nobody's case that the incident was seen by the independent eyewitnesses.

25. In the case of Sohan and Anr. Vs. State of Haryana and Anr (supra) the Sessions Court and the High Court acting upon the statement of sole witness who was not only interested witness being cousin of the deceased but also inimical to the accused as civil litigation was pending between them, convicted the accused though there were material witnesses available to corroborate but they were no examined. Therefore, credibility of the sole eyewitness was further disbelieved because he made a false statement that deceased Dayanand filed

the civil suit whereas in fact it was accused No. 1 Sohan who had filed the suit and he also made wrong statement with respect to the possession of disputed property .

26. Referring to the paragraph – 5 of the statement of PW-5 Vijay Kumar, son of Shatruhan, it is argued that this witness has stated that he did not go to police station along with Teras and he did not go with the police, his father and his uncle and there is no reason for his not going there. He has stated that at what time Teras went to police station, he could not tell as he did not meet him. He was informed by his grandfather that Teras had gone to lodge the report. From the evidence of this witness it is clear that his father Shatruhan did not accompany Teras to police station for lodging the report and his uncle was taken to the police station only after inquest report was prepared separately on the following day. Therefore, it is argued that the version recorded in the FIR that Teras took his father Shatruhan to police station and lodged the report in the night of the date of incident is false and the same was in fact recorded after inquest over the dead body of Raju was performed.

27. The above argument of the counsel for the appellant has no force because after registering the FIR of Ex.P/1 at 22.00 hours on 24.03.1997 injured Shatruhan was sent for medical examination vide Ex.P/18 to PHC, Pamgarh in the same night where he was examined by Dr. Choudhary on 24.03.1997 at about 11.00 p.m. vide Ex.P/12 and was referred to District Hospital where he was admitted at about 2.10 a.m. and died there at about 3.10 in the night.

28. It is true that in the inquest report of Ex.P/5 of Raju Yadav name of the accused persons is not mentioned and the inquest was performed in the presence of complainant Teras (PW-1). However, in the recent judgment of the Supreme Court reported in **2006 Cri.L.J. 1121 S.C.** in the matter of **Radha Mohan Singh alias Lal Saheb & Ors. Vs. State of U.P.**, **Koushal Koshore Singh & Anr. Vs. State of U.P**. the Supreme Court dealing with Section 174 of the Cr.P.C. has held as follows:

Section 174 is limited in scope and is confined to the ascertainment of the apparent cause of death. It is concerned with discovering whether in a given case the death was accidental, suicidal or homicidal or caused by animal and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted. It is for this limited purpose that persons acquainted with the facts of the case are summoned and examined under S. 175. The details of the overt acts are not necessary to be recorded in the inquest report. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted or who are the witnesses of the assault is foreign to the ambit and scope of proceedings under S. 174. Neither in practice nor in law it is necessary for the person holding the inquest to mention all these details.

1994 AIR SCW 2210, overruled. (Paras 12, 13)

29. Learned counsel for the State/respondent has drawn our attention towards the explanation given by the accused in his statement under Section 313 of the Cr.P.C. in reply to question No. 105 and contended that case of the prosecution and the statements of PW-1, 2 and 3 is corroborated by the explanation given by the accused in his statement himself wherein he has described the circumstances in which the incident took place.

30. We have already mentioned the defence taken by the accused in his statement under Section 313 of the Cr.P.C. However, statement made by the accused under Section 313 is not a substantive piece of evidence or a substitute for the evidence of the prosecution. The Supreme Court in its judgment reported in **(2002) 10 S.C.C. 236** in the matter of **Mohan Singh Vs. Prem Singh and another** referring its earlier judgments has held in paragraph – 30 as under;

30. *The statement of the accused under Section 313 Cr.P.C. is not a substantive piece of evidence. It can be used for appreciating evidence led by the prosecution to accept or reject it. It is, however, not a substitute for the evidence of the prosecution. As held in the case of Nishi Kant[1] by this Court, if the exculpatory part of his statement is found to be false and the evidence led by the prosecution is reliable, the inculpatory part of his statement can be taken aid of to lend assurance to the evidence of the prosecution. If the prosecution evidence does not inspire confidence to sustain the conviction of the accused, the inculpatory part of his statement under Section 313 CrPC cannot be made the sole basis of his conviction.*

1. (1969) 1 SCC 347 : AIR 1969 SC 422

31. In the instant case there is no evidence available on record to show that on the date of incident the deceased persons two in number made any assault on the appellant as no injury was found on the person of the appellant whereas numerous grievous injuries have been noticed on the person of the deceased in their postmortem reports. The explanation given by the accused that Shatruhan was dragging his *Bhabhi* Kumari Bai with an intent to rob her honour, cannot be accepted in view of the contradictory suggestions given to PW-3 Shivmati in paragraph 15 of her cross examination. We have already held the statements of PW-1 Teras and PW-2 Gouribai to be reliable and the explanation given by the accused in his statement under Section 313 of the Cr.P.C. lends assurance to the evidence of the prosecution.

32. On the basis of aforesaid discussions, we are of the considered opinion that the prosecution has been able to establish the charges leveled against the accused/appellant Puniram and the Court below has not committed any illegality or infirmity in convicting the appellant under Section 302 of the IPC and sentencing him as mentioned above by the impugned judgment. There is no substance in the instant appeal and it is liable to be dismissed.

33. In the result, the appeal fails and the same is accordingly dismissed.

Sd/-
L.C. BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge